

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
MAY 24, 2006**

**CALL TO
ORDER**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Charles Lapp, Kathy Robertson, Jeff Larsen, Gene Dziza, Randy Toavs, Kim Fleming, and Frank DeKort and Gordon Cross. Don Hines had an excused absence. Jeff Harris and Nicole Lopez-Stickney represented the Flathead County Planning & Zoning Office. There were approximately 20 people in the audience.

**APPROVAL OF
MINUTES**

DeKort made a motion seconded by Cross, to approve the April 19, 2006 meeting minutes. The motion was carried by quorum.

**PUBLIC
COMMENT**

None.

**PUBLIC
REVIEW**

Jeff Larsen reviewed the public hearing process for the public.

**PRELIMINARY
PLAT/
COLUMBIA
RANGE
FPP-06-15**

A request by John T. Van for Preliminary Plat approval of Columbia Range, a sixteen (16) lot single-family residential subdivision on 21.15 acres. All lots in the subdivision are proposed to have neighborhood water and individual septic systems. The property is located off Ekelberry Drive.

STAFF REPORT

Jeff Harris reviewed Staff Report FPP-06-15 for the Board.

APPLICANT

Joe Kaufman represented the applicant and spoke about the common area and asked staff about condition #1. Staff suggested they require 24 feet for the internal subdivision road, not 20 feet. There was a discrepancy in the staff report. Staff commented they would not be opposed to the required 20 feet. Kaufman spoke about the agency comment from the County Health Department. He also spoke about the other public comments that had been received, and commented about the drain-fields and minimum lot sizes.

AGENCIES

None present. There were letters from the Flathead Superintendent of Schools, the Environmental Health Services and Flathead County Weed, Parks and Building Maintenance submitted to the Planning Office.

**PUBLIC
COMMENT**

Russ Crowder, America Dream Montana, commented about Condition #3, and stated it was basically illegal impact fees. He spoke about MCA 76-3-510, and informed the Board it was unlawful to impose this condition. He referenced a letter he had handed to the Board, and stated he wanted condition #3 removed from the conditions. He wanted to ask the applicant to contact an attorney if this condition is approved and imposed, and encouraged the applicant to contact

America Dream Montana to assist with a lawsuit regarding impact fees. He stated that if adopted, as a condition for preliminary plat, America Dream Montana will inform the public as to what the County is up to.

Carol Duval, owner of the property, gave some history of the property. She spoke about how the family got into developing their property, and stated they are proud of what they do. They follow the law and build everything to code. She stated this is their business's subdivision. They are trying to work with everyone.

Brian White, of Envirotech Consulting commented the state allows 500 feet per subdivision in regards to mixing zones and they are asking for the minimum size.

**APPLICANT
REBUTTAL**

Kaufman commented about the applicant paving the road. He stated they are adding value to this area and to the County. They are not opposed to condition #3.

**STAFF
REBUTTAL**

Harris stated that he agreed with Crowder. Under MCA 76-3-510, you can require subdividers to make improvements that are directly attributable to the subdivision. It is not an impact fee. He stated that 76-3-510 is not in the impact fee section of state statutes, it is in the subdivision section of the statutes. The intent of it has always been to be coincidental to subdivision activity. Fleming asked about the paving and the roads. Harris stated that the issue staff has is public safety. Robertson commented about impact fees.

MOTION

Dziza made a motion seconded by Robertson to adopt Staff Report FPP-06-15 as findings of fact as amended and recommended approval to the County Commissioners.

**MOTION
Condition #1**

Fleming made a motion seconded by Robertson to amend condition #1 to change it to 20 feet.

Lapp commented about the road issue, and stated they need to have a direction and stick to it.

Larsen agreed that the Board needs to follow the regulations.

Fleming commented about the traffic and the road.

Cross asked what the width of the primary access road would need to be.

Larsen stated that it is not part of the subdivision and therefore does not need to be 24 feet wide.

**ROLL CALL
Condition #1**

On a roll call the motion passed unanimously.

MOTION
Condition #21

Fleming made a motion seconded by Robertson to add condition #21 to use the standard language for a school bus stop.

ROLL CALL
Condition #21

On a roll call vote the motion passed unanimously.

MOTION
Condition #8

Fleming made a motion seconded by Robertson to amend condition #8 to use the standard language for parkland fees.

ROLL CALL
Condition #8

On a roll call vote the motion passed unanimously.

MOTION
Condition #17 (g)

Robertson made a motion seconded by DeKort to add section g to condition #17 to state that all lot owners must build in such a way as to not encroach on approved drainfield and well locations as shown on the approved lot layout.

ROLL CALL
Condition #17(g)

On a roll call vote the motion passed unanimously.

MOTION
Condition #14

Lapp made a motion seconded by Dziza to amend condition #14 to add the standard language that the developer shall work with Badrock Fire District and DNRC to satisfy any reasonable fire suppression requirements.

BOARD
DISCUSSION

The Board discussed the fire districts and fire suppression for this area.

Toavs commented that staff needs to separate the fire districts and the DNRC fire service area, as they are two separate entities.

ROLL CALL
Condition #14

On a roll call vote the motion passed 7-1 with Toavs dissenting.

BOARD
DISCUSSION

Lapp commented about the size of the lots in this proposal, and asked staff how the Planning Office interpreted the size of the lots.

Harris explained how staff formulated a recommendation.

Cross inquired about condition #2. He stated we are not looking to create an impact fee.

The Board discussed whether or not this would be an impact fee.

Larsen read MCA 76-3-510 for the Board.

Dziza stated that the most important testimony was from the applicant stating they are willing to pave this road to mitigate impacts to public safety.

Lapp commented about having to bring the road up to County standards.

The Board and staff discussed paving and public safety at length.

**MAIN MOTION
ROLL CALL**

On a roll call vote the motion passed 7-1 with Fleming dissenting.

**ZONE CHANGE
REQUEST/
DALE HALL
FZC-06-05**

A Zone Change request in the Evergreen and Vicinity Zoning District by Dale Hall, from R-1 (Suburban Residential), to R-2 (One-Family Limited Residential). The property is located at 427 Maple Drive, and contains 2.58 acres.

STAFF REPORT

Nicole Lopez-Stickney reviewed Staff Report FZC-06-05 for the Board.

APPLICANT

Erica Wirtala, of Sands Surveying represented the applicant. She showed a map of the site and pointed out an existing home site. She stated this is in the Evergreen RSID, and therefore they have to adhere to the 1 acre minimum lot size for septic. She stated they are working with the Evergreen Water & Sewer District to see if this property will be contiguous or how they want to consider it. She stated that due to the lot layout with Spring Creek running through it and the amount of frontage on Maple Drive, the estimate of five additional home-sites is overly generous they think they might get three lots total due to the configuration of this property. She commented that it's a straightforward zone change application that complies with the Master Plan.

Mrs. Hall, the applicant, stated they are working with the Weed Department on weed control.

AGENCIES

None present.

**PUBLIC
COMMENT**

None.

**APPLICANT
REBUTTAL**

None.

**STAFF
REBUTTAL**

None.

MAIN MOTION

DeKort made a motion seconded by Robertson to adopt Staff Report FZC-06-05 as findings of fact and recommended approval to the Board of County Commissioners.

**BOARD
DISCUSSION**

Lapp commented about the Kalispell Master Plan and where they are going to grow out. He agrees that this Board should work with them to make everything happen and work together. He stated that he feels this application gives more weight to the Kalispell Master Plan than it

does to the County Master Plan. He thinks that Evergreen will not be annexed into the city, it will always remain a county area. He asked the Board if they should just go by what Kalispell thinks.

Lopez-Stickney stated the reference in this proposal is to the Kalispell City-County Master Plan which is our adopted Master Plan for a block area. She explained which area that Master Plan encompasses, and stated it is recognized, adopted and accepted by the County.

Fleming stated it was in the cooperative jurisdiction and explained that the jurisdiction dissolved, but the map is still in effect. Her objection is when they go way out past the existing map, way beyond the map. As far as she knows, the map is still in place. When they start to add on to it is when she has a problem.

Harris stated that map was incorporated as part of the 1987 Master Plan, and until we replace that, it is part of the Master Plan.

**MAIN MOTION
ROLL CALL**

On a roll call vote the motion passed unanimously.

**PRELIMINARY
PLAT/
ROSEWOOD
ACRES
FPP-06-11**

A request by Justin Sheeran, Kirk Swanson, and Dennis Pewitt for Preliminary Plat approval of Rosewood Acres, a twenty-two (22) lot single-family residential subdivision on 22.00 acres. All lots in the subdivision are proposed to have public water and individual septic systems. The property is located at 1020 Barnard Lane and 1100 Barnard Lane.

STAFF REPORT

Nicole Lopez-Stickney reviewed Staff Report FPP-06-11 for the Board.

Toavs asked about the easement and whether or not there could be a bike path.

Robertson asked where the 100-year floodplain was located.

Lopez-Stickney pointed it out on the map for the Board.

Toavs asked about the burying of the 10,000 gallon tank, and thought it would have to be buried on private property.

Staff can include language in the conditions stating the applicant has to work with the Fire Department regarding that issue.

APPLICANT

Brian Long of Long Engineering, commented that the water system would have 2 new wells in the subdivision between lots 19 and 20, some sort of pump house. He pointed out an area of standing water and stated they have addressed it as an artificial reservoir. He also pointed out the intermittent stream. The subdivision is 22 lots on 22 acres which complies with the Helena Flats Neighborhood Plan, and is unique with 60 feet of frontage on a County road. He commented that

Helena Flats school is in favor of it for safety. He pointed out the easements and commented about the staff report and stated there is an existing home so there is actually only 20 new drainfields. He pointed out the locations on the map and also pointed out which were approved already by DEQ. Five (5) of the twenty-two (22) lots were previously approved for their location. He stated that lighting was discussed at the Helena Flats Land Use Advisory Committee, and they preferred lights at the entrance, and are comfortable with dark sky principles. He pointed out the floodplain locations which were 100 and 500 yr, and commented about the septic systems. He referenced the staff report and went through the conditions he didn't agree with. He thought a breakaway chain would be better than the ballards that were suggested in the report. In condition #14 that stated no filling, he commented they would have to fill where the road crosses to provide drainage with minimum filling. As far as no building on the wetlands area he would need better clarification on that. He pointed out the lot that would need some clarification. The condition on the walking path, he stated a five (5) foot walking path, they would just as soon do a 5 ft concrete sidewalk, not paved asphalt. A larger walking path would be fine with them. Staff recommends approval as did the Helena Flats Land Use Advisory Committee, and he asked the Board to approve as well.

AGENCIES

None present.

**PUBLIC
COMMENT**

Mike Bear owns property that borders this subdivision. He stated his biggest concern is the groundwater as it is really high. He is opposed to this subdivision and the density as planned. There is already a problem with the storage units and the pollution. He pointed out the property that had a well go dry, and stated that the drainage factor is a concern. He wondered where the runoff will go. He also wondered if there would be a maximum building height and maximum size home. He doesn't want to lose the view shed. He commented that eight (8) lots are less than 1 acre, and stated he would like to see less density. The density is allowable but not good planning when you are going on to the neighbors property with septic. He would like to see the developer give more space and have a few less septic. He commented that the water table is already high, and would like the Planning Board to deny this proposal and have them take another look at it.

Doug Wells, owns property adjacent to this subdivision, and stated that most tracts are treed acres between 2-3 acres. His concern is the water table. He referenced that JTL owns property and they have two man made ponds that are pretty full. He stated that most people would like to see larger lots. His other concern is fire danger and dust pollution during construction.

Lori Wells, is not opposed to this subdivision, she would just like to see more acreage. She commented that when they did the neighborhood plan, they didn't realize the lots around the subdivision were all 2-5

acres. She commented that the applicant did a beautiful job, she just wanted less density. She commented how the Board denied Mackin subdivision because of the density, and is concerned about the dust as well.

**APPLICANT
REBUTTAL**

Long pointed out the property and how it related to other properties as far as size. He commented that everyone had input to the Helena Flats Neighborhood Plan and they feel they have met the density requirements. He stated that DEQ and the Environmental Health Department will evaluate issues in regards to shallow groundwater and drainfields. He stated that lighting can be conditioned, and the density is not out of character with the area. Larsen asked about maximum building size and height restrictions. Long stated that maximum sizes will comply with county standards of 35 feet. He stated that the covenants have no maximum size but there are minimum sizes. He spoke about the drainfields and commented that everything will be maintained on the property owners own lots.

**STAFF
REBUTTAL**

Lopez-Stickney stated that this area is not zoned and they have no restrictions on building heights. They do state that in their covenants, but it is up to the Homeowners Association. Fleming asked about the lot sizes and how it complies with the Helena Flats Neighborhood Plan. She wondered if they met that requirement with it's overall density, even though it is not zoned. Lopez-Stickney replied yes.

MAIN MOTION

Toavs made a motion seconded by Lapp to adopt Staff Report FPP-06-11 as findings of fact as amended and recommended approval to the County Commissioners.

**BOARD
DISCUSSION**

Dziza asked staff about having a Level II treatment system.

Robertson stated she doesn't like twenty-two (22) septic as well. She also stated that twenty-four (24) conditions is too much, and this is not a very thorough application if there has to be that many. She commented that she doesn't like that the road doesn't go through.

**MOTION
Condition #4**

Toavs made a motion seconded by Fleming to amend Condition #4 to add the word minimum, for the five foot walking path.

**ROLL CALL
Condition #4**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Larsen asked about changing condition #14 regarding the fill.

**MOTION
Condition #14**

DeKort made a motion seconded by Cross to amend Condition #14 to take out the word filling.

ROLL CALL
Condition #14

BOARD
DISCUSSION

On a roll call vote the motion passed unanimously.

Lapp commented about the lighting issue.

Robertson spoke about the dark sky initiatives but has had no luck in getting those in writing.

Fleming stated that there could be a condition about lighting being directed downward and shielded.

The Board discussed the lighting issue.

Lapp commented about the Helena Flats Neighborhood Plan and stated that with no zoning that goes with it, he is not ready to abide by a plan with no zoning attached. He feels the point of having a plan in place is so people know what they can have in that area.

Larsen agreed. He commented that the Land Use Committee approved this proposal and said that staff did a great job. He also stated that they still have to comply with DEQ. He stated it is the newest adopted plan in the county and they have complied with that plan. He commented that this is a tough committee to get approval from, and it is not an outdated document.

Robertson commented about her issue with septic and groundwater.

Dziza stated a lot of things the Board took out of the plan got put back into the plan by the County Commissioners.

Harris stated the plan was already pretty much done when he came on board.

Dziza commented his concern that the intermittent chain in the middle and the outlet is blocked off. With the outlet blocked off the intermittent stream might become a slough.

The Board discussed what DEQ would require.

Robertson asked the applicant if they had considered a Level II treatment system.

Long replied.

Larsen commented about the septic and what would be required by the state.

Fleming stated the advantage to putting in a treatment system is so you don't get hundreds of septic systems over an area with shallow groundwater. She commented that if you don't make the developers do

it up front, it is a burden for them later. If you have a failed system the cost would be mind boggling. She stated you can not have twenty-two (22) septic systems in that area.

Cross commented about the Neighborhood Plan and how this proposal fits in to that plan. He is hesitant to approve this as proposed.

Lapp commented about the proposal they denied two (2) weeks prior and talked about the municipal services getting to that area. He would much rather see forty (40) lots with sewer rather than twenty-two (22) lots with septic systems.

MOTION
Condition #25

DeKort made a motion seconded by Dziza to add condition #25 to state that all new septic systems in this development shall be Level II treatment systems.

The Board and staff discussed the systems and asked for clarification.

ROLL CALL
Condition #25

On a roll call vote the motion passed unanimously.

MOTION
Condition #25

DeKort made a motion seconded by Robertson to add (g) to condition #19 to add condition #25 to the face of the final plat.

ROLL CALL
Condition #25

On a roll call vote the motion passed unanimously.

MOTION
Condition #24

Robertson made a motion seconded DeKort to amend condition #24 to add the standard bus stop language.

ROLLCALL
Condition #24

On a roll call vote the motion passed unanimously.

MAIN MOTION
ROLL CALL

On a roll call vote the motion passed unanimously.

OLD BUSINESS

None.

NEW BUSINESS

Harris gave the Board a heads up on what was going on in the next few weeks. He gave a run-down on how many meetings were coming up in the month of June.

Fleming stated she would not be here on the 14th and 21st. She also commented that if improvements are made to a county road it does not take the responsibility away from the county. Fleming commented about the recharge facilities when the Board makes a requirement for those and conditions applications as such. She also stated that the Fire Department will not pay for the upkeep of these tanks and could

the Board put it in a condition that applicants contract with somebody to check these to make sure there is water in them and the pump works.

The Board discussed adding this to the new Subdivision Regulations currently being re-written.

Toavs commented about the roads and bringing them up to county specs. The wording will have to be specific for the developer.

Cross stated they have to be very specific with the language so there is no question, and they will know what they are in for. The applicants need to work with the County Road Department.

The Board and Staff discussed county roads and conditions.

ADJOURNMENT The meeting was adjourned at approximately 9:00 p.m. on a motion by Robertson seconded by Cross. The next meeting will be held on June 7, 2006 @ 6 p.m.

Jeff Larsen, President

Mary Sevier, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 7/12/06